

BRIEF WRITING TIPS

In the course of a year, Board Members read numerous briefs and submission letters. The following are frequent mistakes the Board sees and/or suggestions on how to improve brief writing:

1. The Board seen lots of pore speeling and bad grammar also. The following are some proofreading tips:

A. Give yourself some time away from the document. You will pick up more errors if you set aside the document a day or two and then proofread it. Many mistakes are made when the author has spent the day writing the document, then tries to proofread it at the end of the day, when he or she is tired.

B. Proofread more than once. Proofread the document on the computer and again in hard copy. Have another person proofread your brief for grammatical errors and to insure it makes sense.

C. Do not trust spell check or your computer's grammar software. Spell check will not pick up mistakes such as their instead of there or he instead of she.

2. Unorganized briefs. Briefs should be organized as follows:

- A. Statement of the case
- B. Issues
- C. Facts
- D. Argument and authority
 - 1.) Issue one
 - 2.) Issue two
- E. Conclusion

3. The papa and mama bear syndrome. The Board gets some briefs that are toooo long and others that are toooo short. The Board likes briefs that are "just right." It is called a brief for a reason. I have been on the Board nearly two years, and the longest brief I have read has been 48 pages. What unnecessary language can you cut from your document? My legal assistant will verify that if I write it, it must be important. That axiom is not always true. Many authors place facts in their brief that have no bearing on the issues at hand. Another bad habit is to repeat facts or statements. It is unnecessary to repeat an argument three times in slightly different ways. **Note:** The same is true during oral argument.

4. Cite authority. The Board occasionally receives briefs that do not cite prior cases and/or statutes. The purpose of citing cases is to support your client's position and to help convince the Board to decide in your client's favor. Here the Board is being selfish. The cases and statutes you cite help us research the issues. It also demonstrates to us that you know and understand the law and are not merely shooting from the hip.
5. Submit a brief. Most attorneys submit a brief to the Board. A few attorneys do not send a submission letter to the ALJ or a brief to the Board.
6. Do not send the Board a letter stating you have attached your submission letter to the ALJ as your brief to the Board. The ALJ made rulings in his or her Award or Order that you need to address in your brief to the Board. In addition, the opposing party may have raised new points in its brief to the Board that were not addressed in your submission letter to the ALJ. At a minimum these new questions need to be addressed in a letter incorporating arguments from the submission letter to the ALJ.
7. Don't try to fool the Board. The Board may be fooled, but not our legal assistants. The Board occasionally sees briefs that contain inaccurate factual statements. Parties cite cases that purportedly support a party's position on an issue. However, when the Board reads the cited case, it is not even close to being on point.
8. If you need an extension to file your brief, don't wait until the day it is due and then fax the Board a request for an extension. Give the Board ample time to make a decision on the extension. The Board's general rule is that it will grant the first extension of ten days, unless the extension would interfere with oral argument. Additional extensions will be granted at the Board's discretion for good cause shown.
9. Use correct terminology. The amendments that went into effect on May 15, 2011, distinguishes between a personal injury by accident and an injury by repetitive trauma. The Board sees briefs referring to the date of injury by repetitive trauma as the date of accident instead of date of injury. Misuse of terms such as this is confusing. The Board still receives briefs where the author does not know the difference between appellant and appellee.
10. Number the pages of your brief and when citing testimony or an important fact, list the transcript and page number. Please use normal size type. One attorney submits briefs with extra large type, and kills lots of trees. I do not check out books at the library for the vision impaired, nor am I so old I need extra large type.
11. Please do not include sensitive information such as your client's social security number or the names of minor children in your brief.

12. Do include your postal address and email address for each attorney and identify the party you represent, including the name of the insurance carrier. Stating you represent the respondent when there are three insurance carriers involved is confusing.

Other Practice Tips:

Do not make everything an issue or require unnecessary depositions. If possible, stipulate to facts that are not in issue. For example, most issues of claimant's average weekly wage should be able to be resolved before the ALJ enters his or her Award.

When introducing documents as evidence, paginate the exhibits. It makes it much easier for the ALJ and the Board when writing orders and awards.

At preliminary hearings and depositions, make each medical record a separate and distinct exhibit and ensure they are properly attached. Frequently, the medical records of several medical providers are combined into one exhibit which usually happens at the preliminary hearing. Some attorneys use dividers, but others just lump them together and it is often difficult to determine where one medical record ends and another begins. Try not to introduce exhibits that contain duplicate records.

Ask the court reporter to attach the exhibits to the transcript in such a way that they cannot be lost. The Board prefers documents be attached in the same manner as the transcript pages - by using a three hole punch.

Do not mistakenly attach your Bob Dylan CD as an exhibit instead of the surveillance DVD. I personally enjoy Bob Dylan, but some of the other Board Members prefer rap or easy listening. This incident was not the fault of either attorney. However, it is a good idea when you receive your copy of a transcript that you make sure all of the original exhibits are properly attached. Review the hearing and deposition transcripts for mistakes and have the court reporter correct them. If a replacement page is generated due to a mistake in the transcript, ensure that the incorrect page is replaced with the corrected page.

Applications for Review should identify the issue(s) being appealed. Don't put language such as "issues will be presented in our brief," or "any and all appealable issues," or "all appealable issues will be addressed at oral argument."

Dress appropriately for oral argument. Nearly all attorneys that appear before the Board dress professionally. However, one or two male attorneys appear before the Board without a coat, with the shirt button unfastened and tie askew. This has been a particularly hot summer. However, the Board's courtroom is air conditioned.

And last of all, at oral argument do not refer to Board Members as "you guys."